THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.26294 of 2005

Dated: 31.03.2006

Between:

K.R.K. Reddy, Conductor, rep. by G. Janakiramaiah, Regional Joint Secretary, N.M.D., Vijayawada, Krishna District.

.... PETITIONER

AND

The Assistant Commissioner of Labour, Vijayawada, Krishna

District and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.26294 of 2005

Order:

Against the proceedings of the Deputy Chief Traffic Manager (Rural), Vijayawada, dated 20.10.1997, in imposing the punishment of deferment of two annual increments with cumulative effect, the petitioner made a representation raising certain demands. The matter went before the Conciliation Officer and on a failure report, the matter was referred to the first respondent for referring the dispute to the Industrial Tribunal. But, the first respondent, without referring the dispute to the Government, adjudicated the dispute and closed the claim by impugned order dated

10.03.2005. It is this order which is subject matter of challenge in this writ petition.

In "***Ram Avatar Vs. State of Haryana***"[1], a group of writ petitioners came up before the Supreme Court. The question that arose for consideration was whether the appropriate Government was justified in declining to make a reference of a dispute arising out of termination of services of the petitioners for adjudication to Industrial Tribunal/Labour Court under Section 10 of the Industrial Disputes Act, 1947 (for brevity 'the Act'). Dealing with the parameters of power of the appropriate Government under Section 10 of the Act while making or refusing to make a reference to the Industrial Tribunal for adjudication of a industrial dispute, the Hon'ble Supreme Court held that exercising power under Section 10(1) of the Act, the appropriate Government only performs an administrative function. The exercise of power under Section 10(1) of the Act is not either judicial function or quasi-judicial function. Therefore, the appropriate Government cannot adjudicate on any of the ground available to the parties to the dispute. It is held as follows.

"In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under Section 10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. See Bombay Union of Journalists Vs. State of Bombay (1964) 6 SCR 22: (AIR 1964 SC 1617). It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out."

In view of the settled position of law, the impugned order dated 10.03.2005 of the first respondent is set aside. The first respondent is directed to re-consider his decision and to exercise power under Section 10 of the Act on considerations which are relevant and germane to the decision. The writ petition is accordingly disposed of. No costs.

N.V. RAMANA, J.

Date: 31.03.2006

Nsr/Ksr